

Department of Justice

§ 85.5

(ii) The civil monetary penalty amount for a subsequent violation, initially set at \$110,000, is adjusted to \$120,000 for a violation occurring on or after April 28, 2014.

(c) *Criminal Division*. 18 U.S.C. 216(b), Ethics Reform Act of 1989, violation: from \$50,000 to \$55,000.

(d) *Drug Enforcement Administration*. 21 U.S.C. 961(1), Controlled Substances Import Export Act, transshipment and in-transit shipment of controlled substances: from \$25,000 to \$27,500.

[Order No. 2249-99, 64 FR 47103, Aug. 30, 1999, as amended by AG Order No. 3324-2014, 79 FR 17436, Mar. 28, 2014]

EFFECTIVE DATE NOTE: By AG Order 3690-2016, 81 FR 42500, June 30, 2016, § 85.3 was amended by revising the heading and the introductory text, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

§ 85.3 Adjustments to penalties for violations occurring on or before November 2, 2015.

For all violations occurring on or before November 2, 2015, and for assessments made before August 1, 2016, for violations occurring after November 2, 2015, the civil monetary penalties provided by law within the ju-

risdiction of the respective components of the Department, as set forth in paragraphs (a) through (d) of this section, are adjusted as provided in this section in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, as in effect prior to November 2, 2015. The adjusted penalties set forth in paragraphs (a), (c), and (d) of this section are effective for violations occurring on or after September 29, 1999, and on or before November 2, 2015, and for assessments made before August 1, 2016, for violations occurring after November 2, 2015. For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the adjusted penalty amounts in section 85.5.

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§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.

For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the following table.

| U.S.C. Citation | Name/Description | CFR Citation | DOJ Penalty as of 11/2/15 (\$) ¹ | New DOJ penalty ² |
|--------------------------------|--|--------------------------|---|------------------------------|
| ATF | | | | |
| 18 U.S.C. 922(t)(5) | Brady Law—Nat'l Instant Criminal Check System; Transfer of firearm without checking NICS. | ..... | 5,000 | 8,162 |
| 18 U.S.C. 924(p) | Child Safety Lock Act; Secure gun storage or safety device, violation. | ..... | 2,500 | 2,985 |
| Civil Division | | | | |
| 12 U.S.C. 1833a(b)(1) | Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation. | 28 CFR 85.3(a)(6) | 1,100,000 | 1,893,610 |
| 12 U.S.C. 1833a(b)(2) | FIRREA Violation (continuing) (per day). | 28 CFR 85.3(a)(7) | 1,100,000 | 1,893,610 |
| 12 U.S.C. 1833a(b)(2) | FIRREA Violation (continuing) | 28 CFR 85.3(a)(7) | 5,500,000 | 9,468,050 |
| 22 U.S.C. 2399b(a)(3)(A) | Foreign Assistance Act; Fraudulent Claim for Assistance (per act). | 28 CFR 85.3(a)(8) | 2,200 | 5,500 ** |
| 31 U.S.C. 3729(a) | False Claims Act; ³ Violations | 28 CFR 85.3(a)(9) | Min. 5,500 | Min. 10,781 |
| 31 U.S.C. 3802(a)(1) | Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim). | 28 CFR 71.3(a) | Max. 11,000 | Max. 21,563 |
| 31 U.S.C. 3802(a)(2) | Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement). | 28 CFR 71.3(f) | 5,500 | 10,781 |
| 40 U.S.C. 123(a)(1)(A) | Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act). | 28 CFR 85.3(a)(12) | 2,200 | 5,500 ** |
| 41 U.S.C. 8706(a)(1)(B) | Anti-Kickback Act; Violation Involving Kickbacks ⁴ (per occurrence). | 28 CFR 85.3(a)(13) | 11,000 | 21,563 |

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| U.S.C. Citation | Name/Description | CFR Citation | DOJ Penalty as of 11/2/15 (\$) ¹ | New DOJ penalty ² |
|--|--|-------------------------------|---|------------------------------|
| 18 U.S.C. 2723(b) | Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day). | ..... | 5,000 | 7,954 |
| 18 U.S.C. 216(b) | Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes ⁵ (per violation). | 28 CFR 85.3(c) | 55,000 | 94,681 |
| 41 U.S.C. 2105(b)(1) | Office of Federal Procurement Policy Act; ⁶ Violation by an individual (per violation). | ..... | 50,000 | 98,935 |
| 41 U.S.C. 2105(b)(2) | Office of Federal Procurement Policy Act; ⁶ Violation by an organization (per violation). | ..... | 500,000 | 989,345 |
| 42 U.S.C. 5157(d) | Disaster Relief Act of 1974; ⁷ Violation (per violation). | ..... | 5,000 | 12,500 ** |
| Civil Rights Division (excluding immigration-related penalties) | | | | |
| 18 U.S.C. 248(c)(2)(B)(i) | Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act"); Nonviolent physical obstruction, first violation. | 28 CFR 85.3(b)(1)(i) | 16,000 | 15,909 |
| 18 U.S.C. 248(c)(2)(B)(ii) | FACE Act; Nonviolent physical obstruction, subsequent violation. | 28 CFR 85.3(b)(1)(ii) | 16,500 | 23,863 |
| 18 U.S.C. 248(c)(2)(B)(i) | FACE Act; Violation other than a nonviolent physical obstruction, first violation. | 28 CFR 85.3(b)(2)(i) | 16,500 | 23,863 |
| 18 U.S.C. 248(c)(2)(B)(ii) | FACE Act; Violation other than a nonviolent physical obstruction, subsequent violation. | 28 CFR 85.3(b)(2)(ii) | 37,500 | 39,772 |
| 42 U.S.C. 3614(d)(1)(C)(i) | Fair Housing Act of 1968; first violation. | 28 CFR 85.3(b)(3)(i) | 75,000 | 98,935 |
| 42 U.S.C. 3614(d)(1)(C)(ii) | Fair Housing Act of 1968; subsequent violation. | 28 CFR 85.3(b)(3)(ii) | 150,000 | 197,869 |
| 42 U.S.C. 12188(b)(2)(C)(i) | Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation. | 28 CFR 36.504(a)(3)(i) | 75,000 | 89,078 |
| 42 U.S.C. 12188(b)(2)(C)(ii) | Americans With Disabilities Act; Public accommodations for individuals with disabilities, subsequent violation. | 28 CFR 36.504(a)(3)(ii) | 150,000 | 178,156 |
| 50 U.S.C. App. 597(b)(3) | Servicemembers Civil Relief Act of 2003; first violation. | 28 CFR 85.3(b)(4)(i) | 60,000 | 59,810 |
| 50 U.S.C. App. 597(b)(3) | Servicemembers Civil Relief Act of 2003; subsequent violation. | 28 CFR 85.3(b)(4)(ii) | 120,000 | 119,620 |
| Criminal Division | | | | |
| 18 U.S.C. 983(h)(1) | Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim. | ..... | Min. 250 | Min. 342 |
| 18 U.S.C. 1956(b) | Money Laundering Control Act of 1986; Violation ⁸. | ..... | Max. 5,000 10,000 | Max. 6,834 21,563 |
| DEA | | | | |
| 21 U.S.C. 844a(a) | Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation). | 28 CFR 76.3(a) | 11,000 | 19,787 |
| 21 U.S.C. 961(1) | Controlled Substance Import Export Act; Drug abuse, import or export. | 28 CFR 85.3(d) | 27,500 | 68,750 ** |
| 21 U.S.C. 842(c)(1)(A) | Controlled Substances Act ("CSA"); Violations of 842(a)—other than (5), (10) and (16)—Prohibited acts re: controlled substances (per violation). | ..... | 25,000 | 62,500 ** |
| 21 U.S.C. 842(c)(1)(B) | CSA; Violations of 842(a)(5) and (10)—Prohibited acts re: controlled substances. | | 10,000 | 14,502 |

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| U.S.C. Citation | Name/Description | CFR Citation | DOJ Penalty as of 11/2/15 (\$) ¹ | New DOJ penalty ² |
|--------------------------------------|---|---------------------------|---|------------------------------|
| 21 U.S.C. 842(c)(1)(C) | CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation). | ..... | 500,000 | 500,855 |
| 21 U.S.C. 842(c)(1)(D) | CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation). | ..... | 1,000 | 1,002 |
| 21 U.S.C. 842(c)(2)(C) | CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard ⁹. | ..... | 250,000 | 375,613 |
| 21 U.S.C. 856(d) | Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises ¹⁰. | ..... | 250,000 | 321,403 |
| Immigration-Related Penalties | | | | |
| 8 U.S.C. 1324a(e)(4)(A)(i) | Immigration Reform and Control Act of 1986 ("IRCA"); Unlawful employment of aliens, first order (per unauthorized alien). | 28 CFR 68.52(c)(1)(i) ... | Min. 375 | Min. 539 |
| 8 U.S.C. 1324a(e)(4)(A)(ii) ... | IRCA; Unlawful employment of aliens, second order (per such alien). | 28 CFR 68.52(c)(1)(ii) .. | Max 3,200 Min. 3,200 | Max. 4,313 Min. 4,313 |
| 8 U.S.C. 1324a(e)(4)(A)(iii) .. | IRCA; Unlawful employment of aliens, subsequent order (per such alien). | 28 CFR 68.52(c)(1)(iii) | Max. 6,500 Min. 4,300 | Max. 10,781 Min. 6,469 |
| 8 U.S.C. 1324a(e)(5) | IRCA; Paperwork violation (per relevant individual). | 28 CFR 68.52(c)(5) | Max. 16,000 .. Min. 110 | Max. 21,563 Min. 216 |
| 8 U.S.C. 1324a (note) | IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual). | 28 CFR 68.52(c)(6) | Max. 1,100 Min. 550 | Max. 2,156 Min. 751 |
| 8 U.S.C. 1324a(g)(2) | IRCA; Violation/prohibition of indemnity bonds (per violation). | 28 CFR 68.52(c)(7) | Max. 1,100 1,100 | Max. 1,502 2,156 |
| 8 U.S.C. 1324b(g)(2)(B)(iv)(I) | IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against). | 28 CFR 68.52(d)(1)(viii) | Min, 375 | Min. 445 |
| 8 U.S.C. 1324b(g)(2)(B)(iv)(II). | IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against). | 28 CFR 68.52(d)(1)(ix) | Max. 3,200 Min. 3,200 | Max. 3,563 Min. 3,563 |
| 8 U.S.C. 1324b(g)(2)(B)(iv)(III). | IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against). | 28 CFR 68.52(d)(1)(x) .. | Max. 6,500 Min. 4,300 | Max. 8,908 Min. 5,345 |
| 8 U.S.C. 1324b(g)(2)(B)(iv)(IV). | IRCA; Unfair immigration-related employment practices, document abuse (per individual discriminated against). | 28 CFR 68.52(d)(1)(xii) | Max. 16,000 .. Min. 110 | Max. 17,816 Min. 178 |
| 8 U.S.C. 1324c(d)(3)(A) | IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document). | 28 CFR 68.52(e)(1)(i) ... | Max. 1,100 Min. 375 | Max. 1,782 Min. 445 |
| 8 U.S.C. 1324c(d)(3)(B) | IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document). | 28 CFR 68.52(e)(1)(iii) | Max. 3,200 Min. 3,200 | Max. 3,563 Min. 3,563 |
| 8 U.S.C. 1324c(d)(3)(A) | IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document). | 28 CFR 68.52(e)(1)(ii) .. | Max. 6,500 Min. 275 | Max. 8,908 Min. 376 |

| U.S.C. Citation | Name/Description | CFR Citation | DOJ Penalty as of 11/2/15 (\$) ¹ | New DOJ penalty ² |
|-----------------------------------|---|------------------------|---|--|
| 8 U.S.C. 1324c(d)(3)(B) | IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document). | 28 CFR 68.52(e)(1)(iv) | Max. 2,200 Min. 2,200 Max. 5,500 | Max. 3,005 Min. 3,005 Max. 7,512 |
| FBI | | | | |
| 49 U.S.C. 30505(a) | National Motor Vehicle Title Identification System; Violation (per violation). | ..... | 1,000 | 1,591 |
| Office of Justice Programs | | | | |
| 42 U.S.C. 3789g(d) | Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation. | 28 CFR 20.25 | 11,000 | 27,500** |

** Adjusted penalty capped at 2.5 times the penalty amount in effect on November 2, 2015, the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701 ("2015 Amendments"). See *id.* § 701(b)(2) (amending section 5(b)(2)(C) of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to provide that the amount of the first inflation adjustment after the date of enactment of the 2015 Amendments "shall not exceed 150 percent of the amount of that civil monetary penalty on the date of enactment of the [2015 Amendments]").

¹ The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation or statute as of November 2, 2015.

² All figures set forth in this table are maximum penalties, unless otherwise indicated.

³ Section 3729(a)(1) of Title 31 states that any person who violates this section "is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person." 31 U.S.C. 3729(a)(1) (2012) (citation omitted). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to "not less than 2 times the amount of damages which the Government sustains because of the act of that person." *Id.* § 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

⁴ Section 8706(a)(1) of Title 41 states that "[t]he Federal Government in a civil action may recover from a person—(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—(A) twice the amount of each kick-back involved in the violation; and (B) not more than \$10,000 for each occurrence of prohibited conduct" 41 U.S.C. 8706(a)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

⁵ Section 216(b) of Title 18 states the civil penalty should be no "more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater." 18 U.S.C. 216(b) (2012). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under § 216(b).

⁶ Section 2105(b) of Title 41 states, "(b) Civil penalties.—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—(1) an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and (2) an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct." 41 U.S.C. 2105(b) (2012). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

⁷ The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2012). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

⁸ Section 1956(b)(1) of Title 18 states that "[w]hoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—(A) the value of the property, funds, or monetary instruments involved in the transaction; or (B) \$10,000." 18 U.S.C. 1956(b)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

⁹ Section 842(c)(2)(C) of Title 21 states that "[i]n addition to the penalties set forth elsewhere in this subchapter or subchapter II of this chapter, any business that violates paragraph (1) of subsection (a) of this section shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater." 21 U.S.C. 842(c)(2)(C) (2012). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

¹⁰ Section 856(d)(1) of Title 21 states that "(1) Any person who violates subsection (a) of this section shall be subject to a civil penalty of not more than the greater of—(A) \$250,000; or (B) 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person." 21 U.S.C. 856(d)(1) (2012). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

[AG Order 3690–2016, 81 FR 42500, June 30, 2016]

EFFECTIVE DATE NOTE: By AG Order 3690–2016, 81 FR 42500, June 30, 2016, § 85.5 was added, effective Aug. 1, 2016.